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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/606,507
Filing Date: June 26, 2003
Appellant(s): ATHENS ET AL.

Brian A. Lemm
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 26 May 2010 appealing from the Office action mailed 26 January 2010.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

12-15, 18-27, 29-32, 42, and 43.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN

REJECTIONS.” New grounds of rejection (if any) are provided under the subheading “NEW GROUNDS OF REJECTION.”

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant’s brief.

(8) Evidence Relied Upon

6,424,954	Leon	7-2002
5,799,322	Mosher	8-1998
2004/0006510	Lertzman	1-2004

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12, 18-25, 29-32, 42, & 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leon (US 6,424,954) in view of Lertzman (US 2004/0006510).

As to claim 12, Leon shows:

receiving a first audit record from the value dispensing device, (signed message, Figure 5F, 5214)

the first audit record generated by the value dispensing device ("SMD") at the start of an audit period, the first audit record including a value of at least one register maintained by the value dispensing device at a start of the audit period (Figure 5F, 5214) (Column 18, lines 47-56)

and a first digital signature, (Column 18, lines 47-56 & Column 101, lines 18-20) receiving a second audit record from the value dispensing device ("SMD"), the second audit record generated by the value dispensing device at the end of the audit period, (signed message, Figure 5F, 5214)

the second audit record including a value of at least one register maintained by the value dispensing device at a end of the audit period, (Figure 5F, 5214) (Column 18, lines 47-56)

and a second digital signature; (Column 18, lines 47-56 & Column 101, lines 18-20)

receiving usage data from the value dispensing device for the audit period; (STATUS message, Column 85, lines 1-6 & following table)

determining that the first and second digital signatures verify; (Figure 5F, 5218) (Column 61, lines 41-50) (Column 9, lines 11-20),

and if the determined difference correlates with the corresponding data provided in the usage data, generating a usage report for the value dispensing system based on the usage data. (Figure 8F, element 890)

Leon does not expressly show:

determining the difference between the value of the at least one register at the end of the audit period and the start of the audit period;
comparing the determined difference with corresponding data provided in the usage data;

However, Lertzman teaches usage data (“detail transaction data” [0075]) being compared to the difference between the value at the end of a period and the start of the period (“summary transaction data”). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the teachings of Leon to include the validation as taught by Lertzman in order to verify the remittance is proper for the transactions completed (Lertzman, [0075]).

As to claim 18, Leon further shows:

the first audit record is received before the end of the audit period.
Again, this is inherent to the periodic auditing process. The first report would have been at the beginning of the audit period as the second report of the previous audit.

As to claim 19, the storage and later retrieval of a record previously sent is inherent to a system that compares the record to a later created one.

As to claim 20, Leon further shows:

the at least one register value in the first and second audit records includes a plurality of register values. (Column 18, lines 47-56)

As to claim 21, Leon further shows:

the at least one register value in the first and second audit records includes an ascending register value. (Column 99, lines 37-41)

As to claim 22, Leon further shows:

the at least one register value in the first and second audit records includes a total piece count register value. (Column 100, lines 44-47)

As to claim 23, Leon further shows:

the first and second digital signatures are verified utilizing a public key. 536

As to claim 24, Leon further shows:

indicating an error in the processing of the usage data. (Figure 6F)

As to claim 25, Leon shows:

an interface circuit 122 to receive a first audit record, (Figure 5F, 5214)

a second audit record (Figure 5F, 5214)

and usage data from a value dispensing device (“SMD”), (Column 11, lines 59-61)

the first audit record generated by the value dispensing device at a start of an audit period including a value of at least one register maintained by the value dispensing device at the start of the audit period (Figure 5F, 5214) (Column 18, lines 47-56)

and a first digital signature, (Figure 5F, 5214)

the second audit record generated by the value dispensing device at an end of an audit period including a value of at least one register maintained by the value dispensing device at an end of the audit period (Figure 5F, 5214) (Column 18, lines 47-56)

and a second digital signature; (Figure 5F, 5214)

a controller **240** coupled to the interface circuit **122** and configured to:

(i) verify the first and second digital signatures; (Figure 5F, 5218)

(iv) generate a usage report for the value dispensing device based on the usage data if the determined difference correlates with the corresponding data provided in the usage data. (Column 62, lines 14-43)

Leon does not expressly show:

(ii) determine the difference between the value of the at least one register at the end of the audit period and the start of the audit period if the first and second digital signatures verify;

(iii) compare the determined difference with corresponding data provide in the usage data.

However, Lertzman teaches usage data (“detail transaction data” [0075]) being compared to the difference between the value at the end of a period and the start of the period (“summary transaction data”). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the teachings of Leon to include the validation as taught by Lertzman in order to verify the remittance is proper for the transactions completed (Lertzman, [0075]).

As to claim 29, the storage and later retrieval of a record previously sent is inherent to a system that compares the record to a later created one.

As to claim 30, Leon further shows:

the at least one register value in the first and second audit records includes an ascending register value. (Column 99, lines 37-41)

As to claim 31, Leon further shows:

the at least one register value in the first and second audit records includes a total piece count register value. (Column 100, lines 44-47)

As to claim 32, Leon further shows:

the first and second digital signatures are verified utilizing a public key. (Figure 5B, 536)

As to claims 42 and 43, Leon further shows:

the value dispensing device is a postage meter. (Title)

Claims 13-15 are rejected under 35 U.S.C. §103(a) as being unpatentable over Leon and Lertzman as applied to claim 12 above, and further in view of Mosher (5,799,322).

As to claim 13, Leon further shows:

the first and second audit records each include a respective time stamp, (Column 18, lines 47-56)

Leon does not expressly show:

determining if the time stamp in the first audit record corresponds to the start of the audit period; and

determining if the time stamp in the second audit record corresponds to the end of the audit period.

Mosher shows the verification of time stamps prior to accepting audit data (Columns 31-32, lines 66-8). It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the invention of Leon to add time stamp validation, because this would further show that the data was valid for the audit period and not transactions outside of that time, as is done by Mosher (Column 32, 9-59).

As to claim 14, Leon further shows:

indicating an error in the processing of the usage data. (Figure 6F)

As to claim 15, Leon further shows:

the time stamp includes a date and a time (Column 18, lines 47-56)

Claims 26 and 27, as understood by the Examiner, are alternatively rejected under 35 U.S.C. 103(a) as being unpatentable over Leon and Lertzman as applied to claim 25 above, and further in view of Mosher (5,799,322).

As to claim 26, Leon further shows:

the first and second audit records each include a respective time stamp, (Column 18, lines 47-56)

Leon does not expressly show:

verifying the time stamp in the first audit record corresponds to the start of the audit period; and

verifying the time stamp in the second audit record corresponds to the end of the audit period.

Mosher shows the verification of time stamps prior to accepting audit data (Columns 31-32, lines 66-8). It would have been obvious to one of ordinary skill in the art at the time of the

invention to have further modified the invention of Leon to add time stamp validation, because this would further show that the data was valid for the audit period and not transactions outside of that time, as is done by Mosher (Column 32, 9-59).

As to claim 27, Leon further shows:

indicating an error in the processing of the usage data if one of, the time stamp in the first audit record or the second audit record does not correspond. (Figure 6F)

(10) Response to Argument

All references to “Appeal Brief” below are directed to the Appeal Brief filed on 26 May 2010 unless otherwise noted.

Applicants argue:

“Leon, in contrast is directed to a postage metering system in which an audit transaction is performed periodically to reset a timer” (Appeal Brief, Page 7, Paragraph 1).

Examiner's response:

Applicants allege that the only purpose of the audit transaction is to reset a timer. This allegation, if it were true, would defeat the purpose of the invention. The audit transaction of Leon is used to “allow the provider to audit and track the SMD from time to time to ensure that it is not being used in a fraudulent manner” (Leon, C 10, LL 62-65).

Moreover, Leon's reason for providing the audit transaction is irrelevant to the fact that the audit transaction is performed.

Applicants argue:

"In Leon, there is no second audit record generated at the end of an audit period. The system in Leon uses only a single audit record taken at a specific point in time" (Appeal Brief, Page 7, Paragraph 2).

Examiner's response:

Applicant previously asserted that the "audit transaction is performed periodically to reset a timer" (Appeal Brief, Page 7, Paragraph 1). Once is not periodic. Therefore, Applicants' own statement refutes the assertion that "only a single audit record is taken at a specific point in time." Additionally, the same assertion that the audit transaction is periodic also refutes the assertion that there is no second audit record.

Moreover, Leon discusses resetting the timer (C 19, LL 18-22). Therefore, when the timer expires a subsequent time, another audit transaction is completed.

Applicants argue:

"The Office Action appears to be contending that the audit requests in Leon sent at the end of one period are also considered to be sent at the beginning of a subsequent period, and therefore this single audit request in Leon is the same as a first audit record generated at the start

of an audit period and a second audit record generated at the end of the audit period. It is unclear how a single audit request in Leon is analogous to a first audit report and a second audit report that are generated at different times” (Appeal Brief, Pages 7-8, paragraph spanning).

Examiner's response:

The Examiner is not relying on a single audit request. Leon discloses that after each audit period, an audit transaction must be performed. As part of the audit transaction, a message/record is sent containing register values. After the record is validated, a timer is reset. The reset timer represents a new audit period. After the new audit period is completed, a new audit transaction is performed with a new audit message/record.

Therefore, Leon discloses a first audit period, a first audit record, a second audit period, and a second audit record. It is the second audit period that the Examiner is relying on as the claimed “audit period.” Thus, there is an audit record immediately preceding the audit period. This is what the Examiner is relying on as the “first audit record.” Immediately following the audit period, there is a separate instance of an audit record. This second instance of an audit report is what the Examiner is relying on as the “second audit record.”

Applicants argue:

“There is also no disclosure, teaching or suggestion in Leon of ‘receiving usage data from the value dispensing device for the audit period.’ While the messages in Leon may provide current information, there is nothing in Leon that describes any type of usage data for an audit

period. The Office Action has not provided any indication as to where this feature is allegedly disclosed, taught or suggested in Leon” (Appeal Brief, Page 8, Paragraph 1).

Examiner's response:

Applicants' assertion that “[t]he Office Action has not provided any indication as to where this feature is allegedly disclosed, taught or suggested in Leon” is factually incorrect. The Examiner has cited “(STATUS message, Column 85, lines 1-6 & following table)” for the quoted limitation in the rejection of claim 12. See Paper 20100115, Paragraph 9. Applicants have not addressed this citation in their argument. Therefore, Applicants have not shown an error in the Examiner's reasoning, because the Examiner's reasoning has not been addressed.

Applicants argue:

“There is also no disclosure, teaching or suggestion in Leon of generating a usage report for the value dispensing system based on the usage data if the determined difference correlates with the corresponding data provided in the usage data as is recited in claim 12. The Office Action contends that Fig. 8F and Col. 62, lines 14-43, disclose this feature. As described in Col. 39 of Leon, Fig. 8F shows a diagram of a device status screen 890. The Status Screen 890 displays information about the SMD and the user, which may be helpful for tracking and troubleshooting by the provider or U.S. Postal Service” (Appeal Brief, Page 8, Paragraph 2).

Examiner's response:

First, the Examiner notes that the actual limitation in claim 12 is “if the determined difference correlates with the corresponding data provided in the usage data, generating a usage report for the value dispensing system based on the usage data.” Claim 25 recites “generate a usage report for the value dispensing system based on the usage data if the determined difference correlates with the corresponding data provided in the usage data” which is closer to the language argued. Because Applicants have not argued the actual limitations of the claim, the argument is not persuasive.

Second, Lertzman has been used to show the “determining the difference...audit period” and “comparing the determined difference...usage data.” The Examiner’s citation of Leon (Figure 8F, element 890) was intended to show “generating a usage report...usage data.” The Ascending Register, Descending Register, Maximum Indicum Value, and Minimum Indicum Value found in Figure 8F, are based on usage data.

Third, this is a conditional limitation. There is no indication of any action to be performed if the determined difference does not correlate with the corresponding data provided in the usage data. Because no action is set forth for the situation where the difference and the data do not correspond, one of ordinary skill in the art would understand that no action needs to be taken in this situation. Because no action needs to be taken if the determined difference does not correlate with the corresponding data provided in the usage data, the step of “generating a usage report...usage data” does not need to be performed in order to infringe/anticipate the claim. See MPEP § 2106 II. (C).

Applicants argue:

“The current status of the postage device is not the same as a usage report generated based on usage data. With respect to Col. 62, as stated in Col. 62, lines 14-43, of Leon, if the Control Total is equal to the sum, the SMD increases the value of the internally stored Descending register, and prepares and sends a FUND4 message to the host PC. The SMD also records the Funding Revenue amount and the date and time of this Funding transaction, so it can report it as the previous values in the next Funding transaction. Increasing the value of the descending register is not the same as generating a usage report based on usage data. Furthermore, the FUND4 message is not a usage report - it merely is a status message to indicate the status of the postage download” (Appeal Brief, Page 9, Paragraph 1).

Examiner's response:

It appears Applicants are arguing that a funding processes is not a use of the SMD, and thus if there is a funding process performed during the period it would make the register values inaccurate for the usage of the SMD. The Examiner respectfully disagrees. The funding process is critical to the usage of the device to issue postage because without funding the SMD has no value for which postage can be issued. Additionally, the SMD is clearly used in the funding process as is shown in the referenced passage, “It instructs the SMD to increase the value in the descending register, thereby increasing the SMD's revenue store. This message is processed in the states indicated in Exhibit C. If this message is received while in any other state, the SMD responds with an ERROR message that includes an error code of BAD_STATE.” Therefore,

because the SMD is used in the funding process, and because the funding process is critical to the issuance of postage, clearly the funding process and thus its related data is usage data.

Applicants argue:

“[T]he system in Lertzman reconciles the detail transaction data to summary transaction data by comparing detail line items and amounts of the detail transaction data to the summary transaction data. This would entail reviewing each of the detailed transactions and ensuring that the amount for each detailed transaction corresponds to the amount reported in the summary. This is not the same as determining the difference between the value of a register included in audit records at the end of the audit period and the start of the audit period. There are no differences determined between two audit records in Lertzman (Appeal Brief, Page 11, Paragraph 2).

Examiner's response:

The summary transaction data is the difference between the starting (zero) value and the ending value for the period. Because the summary transaction data shows the change during the period, the difference is necessarily determined in the calculating of the summary transaction data.

Applicants argue:

“Furthermore, in Lertzman the amount that the merchant should have remitted is compared with the amount the merchant actually remitted to ensure the merchant remitted the

proper amount. This is not the same as comparing a determined difference with corresponding data provided in usage data” (Appeal Brief, Pages 11-12, paragraph spanning).

Examiner's response:

Applicant have proffered the conclusory statement “[t]his is not the same as comparing a determined difference with corresponding data provided in usage data” without any factual support.

Additionally, the Examiner is relying on the comparison between the detail transaction data and the summary transaction data as the comparison between the usage data and the determined difference. Because the Examiner has not relied upon the reference in the manner argued by Applicants, the argument is not persuasive.

Applicants argue:

“The Office Action contends that it would have been obvious to have modified the teachings of Leon to include the validation as taught by Lertzman in order to verify the remittance is proper for the transactions completed” (Appeal Brief, Page 12, Paragraph 1).

Examiner's response:

Again Applicants are arguing the Lertzman reference in a manner different than how it was applied by the Examiner. Because the Examiner has not relied upon the reference in the manner argued by Applicants, this argument is also not persuasive.

Applicants repeat the same arguments addressed above, this time in regards to claims 25, 29-32, and 43 (Appeal Brief, Pages 13-18). For the same reasons as set forth above in regards to claims 12, 18-24, and 42, the arguments to claims 25, 29-32, and 43 are also not persuasive.

Additionally, the Examiner has provided a table mapping the limitations of representative claim 12 to the Leon and Lertzman references in Appendix A.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the Examiner in the Related Appeals and Interferences section of this Examiner's Answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Joshua Murdough/

Examiner, Art Unit 3621

Conferees:

/EVENS J. AUGUSTIN/

Primary Examiner, Art Unit 3621

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SPE 3621

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Appendix A: Table mapping representative claim 12 to the references

Claim 12	Leon (US 6,424,954)	Lertzman (US 2004/0006510)
A method for a data center to process usage data of a value dispensing device comprising:		
receiving a first audit record from the value dispensing device	receiving a first signed message (Figure 5F, 5214) from the SMD (Id.)	
the first audit record generated by the value dispensing device at the start of an audit period,	the first signed message generated by the SMD (Figure 5F, 5214) at the start of an audit period (C 19, LL 7-22)	
the first audit record including a value of at least one register maintained by the value dispensing device at the start of the audit period	the first signed message including a value of secure revenue registers (C 18, LL 50-52) maintained by the SMD (C 18, LL 54) at the start of the audit period (C 19, LL 7-22)	
and a first digital signature;	and a first digital signature (C 11, LL 59-63);	
receiving a second audit record from the value dispensing device,	receiving a second signed message from the SMD (repeated everytime the timer expires, C 19, LL 18-22),	
the second audit record generated by the value dispensing device at the end of the audit period,	the second signed message generated by the SMD at the end of the audit period (from subsequent audit transaction, after the timer expires, C 19, LL 18-22),	
the second audit record including a value of at least one register maintained by the value dispensing device at the end of the audit period	the second signed message including a value of secure revenue registers (C 18, LL 50-52) maintained by the SMD (C 18, LL 54) at the end of the period (C 19, LL 18-22)	
and a second digital signature;	and a second digital signature (C 11, LL 59-63);	
receiving usage data from the value dispensing device for the audit period;	receiving a STATUS message from the SMD for the audit period (C 85 LL 1-6 & following table);	
determining that the first and second digital signatures verify;	determining that the first and second digital signatures verify (Figure 5F, 5218; C 61, LL 41-50; C 9, LL 11-20);	

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determining a difference between the value of the at least one register at the end of the audit period and the start of the period;		determining summary transaction data [0075];
comparing the determined difference with corresponding data provided in the usage data		comparing the summary transaction data with the detail transaction data [0075]
and if the determined difference correlates with the corresponding usage data, generating a usage report for the value dispensing system based on the usage data.	and if the determined difference correlates with the corresponding usage data, generating a device status (Figure 8F) for the value dispensing system based on the Ascending Register, Decending Register, Maximum Indicium Value, and Minimum Indicium Value (Id.).	